

**REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested in view of the amended claims and the following remarks.

The status of the claims is as follows:

Claims 1-9 – cancelled and rewritten as claims 10-18;

Claim 19 – newly presented; and

Claims 1-9 were previously rejected.

Claims 1 to 9 have been rewritten to place them in better form for examination and to remove the informalities noted in the office action of February 22, 2005. No new matter has been added. With regard to the rejection of claim 7 under 35 U.S.C. §112, second paragraph, the preferred temperature range has been removed from claim 16 and placed in newly presented claim 19. This rejection is overcome and should be withdrawn.

The examiner has rejected claim 6, now claim 15, under 35 U.S.C. §112, first paragraph, because the specification does not enable the temperature range during the mixing and spreading steps. This rejection has been overcome and should be withdrawn. Because of the nature of the present invention, no further temperature control devices are needed to maintain the temperature of the blacktop material as it passes through the mixing and spreading steps. The present invention is directed to a method and apparatus that can spread blacktop material at a temperature lower than that presently used. However, claim 15 now indicates that the temperature range relates to the temperature of the material as it is received. This is clearly enabled and this rejection should be withdrawn.

The examiner has rejected claims 1, 4, 5, 8, and 9 under 35 U.S.C. §102(b) as anticipated by Kilheffer et al. U. S. Patent No. 5,590,976, hereafter Kilheffer. This rejection is traversed.

Kilheffer does not disclose the mixing of a wetting agent mixed with water into a bitumen-coated aggregate. In Kilheffer, there is no disclosure of a wetting agent. Further, in Kilheffer, the aggregate is coated in-situ with the bitumen emulsion at the same time as the water. There is no receiving of a bitumen coated aggregate nor is there any mixing of a water wetting agent mixture with the bitumen-coated aggregate. Therefore, this rejection is no longer warranted and should be withdrawn.

The examiner has rejected claims 2 and 3 under 35 U.S.C. §103(a) as unpatentable over Kilheffer in view of Burch U. S. Patent No. 6,682,593. This rejection is traversed.

Burch, like Kilheffer, discloses combining all the materials with the aggregate at the same time. The emulsion 20 of Burch is combined with the aggregate 22 in the mixer 42. There is no disclosure in Burch or Kilheffer of mixing a water-wetting agent mixture with bitumen coated aggregate as set out in the present claims. Therefore the combination of these documents would not lead a person of ordinary skill to the invention as claimed in claims 2 and 3. This rejection should be withdrawn.

The examiner has also rejected claim 6 under 35 U.S.C. §103(a) as unpatentable over Kilheffer in view of Thomas et al. U. S. Patent No. 6,599,057, hereafter Thomas. This rejection is traversed.

Thomas does not remove the inherent deficiencies of Kilheffer. Thomas does disclose a lower temperature but has no disclosure of the method steps of the present invention. Kilheffer also does not disclose or suggest these steps as discussed above. Therefore, this rejection should be withdrawn.

The examiner has rejected claims 3 and 7 under 35 U.S.C. §103(a) as unpatentable over Kilheffer in view of Omann U. S. Patent No. 6,186,700, hereafter Omann. This rejection is traversed.

Omann does not remove the inherent defects of Kilheffer. Omann relates to the incorporation of recycle materials into the blacktop material. Omann also does not describe the step of mixing a water-wetting agent mixture with a coated aggregate. Therefore this combination of documents would not have led a person of ordinary skill to the invention as claimed in claims 3 and 7. Therefore this rejection is no longer appropriate and should be withdrawn.

It is believed that the present application is in condition for allowance. An early indication of allowability is requested. If the examiner has any minor issues, he is invited to contact the undersigned by telephone.

Appl. No. 10/824,880  
Amdt. dated August 26, 2005  
Reply to O.A. of February 22, 2005

**Deposit Account Authorization**

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

McCracken & Frank LLP  
200 W. Adams, Suite 2150  
Chicago, Illinois 60606  
(312) 263-4700  
Customer No: 29471

By: 

J. William Frank, III  
Reg. No: 25,626

August 26, 2005